Committee on Resources,

Subcommittee on National Parks, Recreation, & Public Lands

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Witness Statement

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Written Testimony of Michael E. Noel Regarding H.R. 2114
"The National Monument Fairness Act of 2001"

It is an honor and a privilege to be asked to testify before the United States House of Representatives Subcommittee on National Parks, Recreation, and Public Lands regarding the "The National Monument Fairness Act of 2001" (H. R. 2144). I am here today representing the Kane County, Utah Resources Development Committee (KCRDC). The KCRDC was established by the Kane County Board of Commissioners (KCBC) by Ordinance No. 1998-2 on June 22, 1998. The committee acts as an advisory committee to the KCBC for the purpose of assisting the board in promoting the development of the countys mineral, water, manpower, industrial, historical, cultural, timber, and other resources on all lands including federal land and state land within Kane County. The KCRDC was established pursuant to State Law as prescribed in the Utah State Code Sections 17-5-265, 267, 269, 270 and 271. The committee is specifically empowered to assist the commission in the proper development and utilization of the vast resources of the county which occur on private, state controlled, and federally controlled lands. The historical planning process for administration of these lands is directed by federal and state agencies with the legal requirement that the federal agencies will coordinate all land use plans with state and county land use plans. Kane County has a detailed and inclusive General Plan which identifies among other things the need for economic development of the federal and state lands, access across the federal and state lands, and the historical sustained multiple use of these lands for the economic, recreational, transportation, public purpose, cultural customs, and historical needs of the citizens of Kane County.

The federal government under the direction of the United States Congress has a long history of cooperation with the local counties wherein they control the management on large tracts of public lands. The public use and proper economic development of the federal lands in Kane County under a multiple use and sustained yield approach is essential to the economic stability of the county. With the creation of the Grand Staircase-Escalante National Monument (GSENM) in September of 1996, over 51% of the land in Kane County and almost 20% of the land in adjacent Garfield County was placed in special management categories that severely limit economic development in the counties. As result of this action the citizens of Kane and Garfield county have suffered economically. The size of the monument designation is staggering when compared to other national parks in the lower 48. It is 52 times larger than Bryce Canyon National Park, and 13 times larger than Zion National Park. It is one third larger than the entire Glen Canyon National Recreation Area including Lake Powell which contains over 2000 miles of shoreline. It is in fact 500 square miles larger than the entire state of Delaware. For the president to act unilaterally to set aside this vast area of public land without so much as a notification of the Governor of the State, the Congressional Delegation, county government or the local citizens can only be viewed as an irresponsible act taken for political

purposes to evade the provisions of the National Environmental Policy Act (NEPA) and to overcome Congressional involvement.

The KCRDC and the Citizens of Kane County have been closely following the progress of the United States House of Representatives Committee on Resources and the House Subcommittee on National Parks, Recreation, and Public Lands, who early on recognized the illegal nature of the creation of the GSENM. We have appreciated the work that the committee has done to try and rectify this misuse of power and to put into place a process that will insure that this type of unilateral decision by the executive branch of government will not occur in the future. In the interim, the KCRDC is hopeful that the United States Congress can find ways to mitigate the damage done to the local economies of Kane and Garfield Counties as a result of these massive restrictive land designations. H. R. 2114 is a step in the right direction to modify and update the 95 year old Antiquities Act to meet the needs of the American public in 2001.

Over the past six months, the KCRDC worked diligently to prepare a report entitled "Living With the Grand Staircase-Escalante National Monument, AA Report on the Creation, Management, Implementation, and Deleterious Effects of the Monument on the People of Kane and Garfield Counties and the Citizens of the United States of America". The report was written to provide information that can be used in determining what immediate actions can be taken to relieve the burden of the monument creation on the citizens of Kane and Garfield Counties. In addition, the KCRDC feels that the report will provide meaningful information to the Subcommittee and to the United States House of Representatives to enable them to see the effects of special management designations on large tracts of public lands in rural America without local and State input and without the ratification of the U. S. Congress who has the ultimate responsibility for the management and disposition of all the public lands. The following is a brief summary of the subject 95 page report:

Kane County and Garfield Counties have suffered at the hands of the biocentric radical environmental movement in the past through the loss of the many major economic resource based employers beginning in 1991 with the initial downsizing of Kaibab Industries Lumber Mill. The final closing of the Kaibab Lumber Mill operation in 1996 resulted in the total loss of 273 jobs and a forecast out-migration of 470 persons from Kane County. Additional jobs were lost in Garfield County. The average of the jobs lost had a median income of more than double the median income of the remaining workforce. When the new Grand Staircase/Escalante National Monument was designated by Executive Order by President Clinton, the federal government gave the impression that the new Monument would be a major contributor to Kane County's economy even though traditionally such monument designations follow their mandate of restrictive preservation of the resources with little significant contributions to the economic base of the surrounding communities. Sadly, after five years of living with the monument, the economic conditions in Kane and Garfield are worse than ever. Promises of increased tourism and additional business opportunities have not materialized. In addition, the increased federal presence and the restrictive Monument Plan have created a divisive community.

Transportation: Over the past five years, the Clinton, Gore, Babbitt Administration, acting in advocacy for an extreme environmental philosophy, ignored existing law and congressional mandate by using unilateral administrative fiat to usurp valid existing rights (RS 2477 rights-of-way) in an effort to effect complete control and authority over transportation and access within the Monument. The Monument Plan fails to recognize both the rights and importance of a viable transportation system to Kane County and its residents who rely on natural resource utilization on public lands for economic stability.

Livestock Grazing: The GSENM Plan is a carefully crafted document that was produced with a total disregard for the Kane County General Land Use Plan and existing federal and state law. The plan has the potential to eliminate sustained yield and multiple-use of the public lands within the Monument specifically centering on cattle grazing. The Monument Plan states that the evaluation of grazing will be consistent with all applicable legal authorities, including the Federal Land Policy and Management Act (FLPMA), the Taylor Grazing Act (TGA), the Public Rangelands Improvement Act (PRIA)...etc. (Page 41, GSENM Plan). The plan and the "Professionals" that wrote the plan ignored federal and state law and put in place a document that can be utilized to remove cattle from the public lands within the monument. The plan changes the existing rules and regulations that were in place to manage livestock on the public lands and supplants them with the BLM produced "Standards for Rangeland Health and Guidelines for Grazing Management." The GSENM Management Plan is contradictory to the Kane County General Plan in several areas regarding livestock management and use of the public lands.

Kane County is an area larger in land mass that the state of Connecticut, however, unlike Connecticut, 90% of the land is controlled by the federal government. Only 4.4% of the entire land mass in Kane County is in private hands. Residents must utilize the natural resources and public lands to sustain their families. The battle over public land use and access has been ongoing for decades. Severe livestock grazing reductions, restrictive regulations, and access to the land are at the forefront of the current battle. Since September 2000, there have been two notices of allotment closures posted at the Kane County Courthouse. Although, BLM states that it will furnish a copy of the regulations and a detailed map of the closed areas, citizens have been denied the document by the BLM. These closures are unreasonable, impractical and not science-based closures. This action by monument management was arbitrary and capricious and fails to meet federal requirements regarding consultation, negotiations, and reasonable multiple use and range improvement mandates. It also violates the pledge in the Presidential Proclamation establishing the monument subject to valid existing rights which include but are not limited to livestock grazing preference rights on federal lands.

As Paul Jenkins (retired BLM range manager) representing the Kane County Cattlemen=s Association stated at a Congressional hearing in 1979, AWhat is this desperate need, and what is so great about an unused and wasted resource---what is this grave fondness for non-productivity? If locking up our resources is the answer to this nation=s problems, then the federal government should take immediate steps to acquire 65% of the lands in all the 50 states. If the government can best manage forest and range land, they can surely do a better job than the Iowa corn grower or the Georgia peanut farmer. Further, think of the improvement and disbursement of the aesthetic venture if every state would contribute 6 or 7 million acres to wilderness.@

Water Resources: Perhaps the greatest threat to the use and enjoyment of private land in Kane County is the effects of the GSENM on private water rights. Although water rights are adjudicated by the State of Utah and are the private property rights of the citizens of Kane County, the Grand Staircase Monument Plan greatly impacts private water rights on private property within the boundaries of the monument and on private property situated adjacent to the monument. There are approximately 1400 points of diversion for water rights within the monument. About half are in the name of the Bureau of Land Management and the other half are recorded in the name of the private or state water right owner. Those diversions which are in the name of the BLM are in fact rights connected to cattle grazing permittees and would not have been adjudicated in the name of the federal government without the private cattle permittee=s showing of beneficial use. The other 700 or so water rights are connected to private land parcels within the Monument boundaries. In addition those parcels of private land lying adjacent to the monument, in many cases, derive

their water from the watershed areas inside the monument. It is estimated that an additional 700 to 1000 private water rights were impacted by the monument designation. This would mean that more that 2000 private water rights in Kane County alone were negatively impacted by the creation of the GSENM and the implementation of the monument plan. Although there was a vigorous appeal of the language in the Monument Plan regarding water resources, the monument planners totally ignored public input, the Kane County Water Conservancy District input, and the Utah State Engineer=s input to the Monument Plan regarding the use and development of private water rights in the monument.

The information regarding water rights as recorded in the Monument Plan conflicts with Utah state law. The plan states that: AIn general, diversions of water out of the Monument will not be permitted." The plan does allow for some exceptions for Acommunity culinary water if the applicant can demonstrate that the diversion of water will not damage water resources within the Monument or conflict with the objectives of the plan...@ The ability for a public utility to meet the criteria for moving private water rights off the monument is severely limited by the plan. This would be the case even if the applicant has the legal l water rights to a particular surface flow or underground aquifer flow. The federal government could protest the action and go to court to stop water development. This is simply a takings of private water rights without compensation. There were no federal reserve water rights created as a result of the presidential proclamation, but that did not stop the federal planners from restricting the use and development of private water rights in the Monument Plan. Wild and Scenic Rivers recommendations were also included in the plan with over 252 miles recommended. If these designations are approved this could add additional restrictive management to another 80,060 acres which will further impact private and federal grazing water rights as well as access, recreational use, and cattle grazing. It is apparent, that the Monument Plan is the document that will be used to stop the private use of valid existing private water rights and to impede any type of water right development in Kane County.

Minerals: A Utah State Geological Society report describe perhaps the most controversial debates regarding the creation of the Monument. These are the unresolved issues with the vast mineral values and mineral potential within the boundaries of the Monument. In January of 1997 M. Lee Allison, Utah State Geologist for the Utah Geological Society produced Circular 93, "A Preliminary Assessment of Energy and Mineral Resources with the Grand Staircase-Escalante National Monument." Although the BLM Division of Minerals were aware of the extensive mineral reserves in the monument, it is unfortunate that this report could not have been made public prior to the designation. The lock up of literally billions of tons of energy minerals and strategic minerals at a time when the United States is facing an energy crisis is malfeasance. The report states in the summary section that **"the value of known and potential and energy mineral resources in the GSENM at 1997 prices is between $223 billion and $330 billion dollars"** (this value would now be higher due to domestic energy shortages). This figure does not include any additional value for tar sands, carbon dioxide reserves, or any other mineral deposits such as titanium, uranium, or copper. The report goes on to state that the 1.9 million monument acres in Kane and Garfield counties includes some of the most energy-rich lands in the lower 48 states. The Utah School and Institutional Trust Lands at one time held over 200,000 acres of mineral rights in the monument. After the Monument designation, President Clinton directed the Secretary of Interior to trade these lands for other federal lands or resources in Utah that are of comparable value. The State has since traded these lands for money and mineral rights in other locations. Circular 93 was created for the purpose of assessing and evaluating the mineral resources in the monument, to qualitatively describe the resource potential for each known commodity, and to propose plans to better assess

the potential values in order to help assure that Utah's school children receive fair and just compensation.

The Monument Plan specifically withdrew all of the Federal lands and interests in lands within the Monument from entry, location, selection, sale leasing, or other disposition under the public land laws, including the mineral leasing and mining laws. Thus no new Federal mineral leases or prospecting permits may be issued, nor may new mining claims be located within the Monument. Authorization for activities on existing mineral leases and mining claims, according to the Proclamation will be governed by Valid Existing Rights. Within the monument there are currently 68 Federal mining claims covering approximately 2,700 acres, 85 Federal oil and gas leases encompassing more than 136,000 acres, and 18 Federal coal leases on about 52,800 acres (GSENM Plan page 51). It is interesting to note that these 191,000 acres of land is only 1% of the entire 1.9 million acre Monument. The obvious question is why did the Clinton-Gore-Babbitt administration act to lock up 1.9 million acres of federal land under the Antiquities Act that was supposedly threatened by development when only 1% of the land was under mineral lease?

Recreation and Tourism: Gary Nicholes a professional recreation specialist has worked as a consultant for the BLM the National Park Service, the United States Forest Service and the State of Utah over a period of 25 years. He calls the creation of the Monument a "Politically Motivated Action" and describes how the proposed resource plan or management policy for the new recreation resource was initiated by special interests or political appointees to meet specific opportunistic purposes. As a result, Nicholes concludes that the Monument plan doesn't meet the broader concern of local economies or preferred recreation user groups. "While the GSENM has some unique dispersed characteristics located within its boundaries its special environment is common in its entirety for such a large national monument designation. The present GSENM's Administrative Plan doesn't replace the economic value or quality of life it extracts from local communities by severely restricting regional travel and recreation experiences within its boundaries."

Creation of the Monument-Legal Analysis: This section of the report is a legal analysis of the creation of the Monument. It outlines the process by which the Clinton Babbitt administration illegally made the designation and the reasons why it is contrary to law. In order to be both legal and legitimately accepted, President Clinton's Proclamation designating the GSENM must have met the following criteria as identified in the 1906 Antiquities Act: (1). The use of the Antiquities Act must originate with the President. (2). The Antiquities Act can only protect objects of historic and scientific interest. (3). The objects of historic and scientific interest must be endangered. (4). Land reserved under the Antiquities Act "in all cases shall be confined to the smallest area" necessary to manage the protected objects.

President Clinton did not initiate the GSENM inquiry, however, a fake paper trail was established to make it appear that he did. The Department of Interior initiated the process in order to exclude Congress and the American public from participating in this decision as required by the Federal Land Policy Management Act (FLPMA), the National Environmental Protection Act (NEPA), the Administrative Procedures Act (APA) and other laws. The GSENM Proclamation eliminates almost two million acres of land from multiple use and sustained yield and was driven by an extreme environmental philosophy related to expanding wilderness status and for political reasons rather than protecting endangered objects. The Babbitt administration clearly knew that no objects of historic or scientific interest were endangered.

The nearly two million acres within the GSENM and the lack of endangered objects of historic and scientific interest combine to violate the smallest area test. The GSENM Monument is equal in size to a one and one-half mile wide parcel of land stretching from San Francisco to New York City and far exceeds the intent and authority delegated to the President under the Antiquities Act. The legality of the Monument designation aside, the Monument boundary and the GSENM Management Plan also exceed authority provided in either the Antiquities Act Proclamation or FLPMA, the BLM's organic act. The entire Management Plan, including the Monument boundary, requires extensive revision in order to meet lawful compliance with the Antiquities Act, FLPMA, NEPA, APA, Taylor Grazing Act, the Public Range Lands Improvement Act and others. The public, the economic needs of local communities, private property interests and valid existing rights need to be considered in planning revisions, in a meaningful way, as that has not happened regarding the Monument planning process to date. The use of the Antiquities Act in evading public participation and Congressional involvement creates concern beyond a legal argument. It raises questions regarding the nobility of the entire designation process.

The Monument Plan Locks the American People out of their Land: Although Bill Clinton promised on September 19th, 2001 that valid existing rights would be protected and that the creation of the Monument would somehow preserve the land for the American people and provide a place where they could enjoy solitude and the peace of nature, this was in fact a lie. The reality at that time was that the subject 1.9 million acre land area was already accessible and available for use by the American public and the reality today is that the creation of Monument and the resulting Monument plan greatly restricts the access and multiple use of these public lands for recreation and solitude. With the GSENM Plan in place only about 6% of the entire Monument (Frontcountry Zone and Passage Zone) will be readily accessible by the vast majority of American taxpayers. The GSENM Plan totally restricts vehicle or any kind of mechanical access to over 65% of the Monument. Because of the rugged and remote character of the Monument, only the most hardy and probably because of the limitations most Americans have on their time due to the need to make a living and support their families, only the most affluent in the society will ever be able to visit this area. In other words how many Americans have the financial capability to back pack into a remote area for two to three weeks at a time, and that is assuming that you can even get the BLM to issue you a camping permit. Prior to the creation of the Monument camping, hunting, backpacking, four-wheeling, wood cutting was readily available on these lands with little or no restrictions.

Conclusions: One of the major objectives of the KCRDC report was to motivate those in "political power" positions on the federal, state and local levels to seriously consider and actively seek solutions to the regional problems generated by the monument's designation. Local residents and local elected officials feel that the problems created by the monument designation are not fully understood by those who reside outside of the affected region. BLM monument planners touted the benefits of the plan to the tourist economy. The monument was supposed increase recreational and tourist activity in the county which would compensate for the loss of resource based employment. However, it is readily apparent from a review of the monument plan that little opportunity will be offered to local economies to seek a mix of travel and recreation resources within the monument. When attractions and activities are restricted in the monument plan as they are, this action severely limits investment capital and planning flexibility to establish a variety of successful business opportunities for those living in local communities.

The only Kane County residents that seem to be benefitting economically from the monument are the highly paid GS-12's, 13's, 14's and GS 15 GSENM employees and the management team which were hand picked

by the Babbitt administration to move into the area. Very few positions went to the local populace. The American taxpayer is getting fleeced twice on this illegal action. First he was told that the lands were set aside for present and future generations to use and enjoy which after reading the KRDC report one will discover was a deception to garner support from the American public. The land if kept in monument status, will only be available for federal bureaucrats, researchers, and a few elite individuals who are able to spend weeks hiking and traveling on foot with the proper permits. Second the taxpayer gets to foot the bill for the 1000% increase in budget to "manage" the lands with 5 times the number of highly paid federal employees (from 20 to over 109 not including summer hires which brings to total to close to 120). At a time when the average Kane County family is bringing home less than $28,000 in annual wages the designation and over staffing of the monument by the federal government has created a new privileged class of citizen in the county i.e. the federal bureaucrat.

H.R. 2114 is just the type of legislation that is needed to prevent the kind of problems that have resulted from the creation of the GSENM. If the legislation is passed, the President would still be free to designate 50,000 acres of public land as a National Monument without congressional approval. This is more than 78 square miles of land and would be more than adequate to protect historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest. Having worked in federal land management for over 21 years I can testify that the federal and state laws and regulations that have been passed and implemented since 1906 are entirely adequate to protect the values identified in the Antiquities Act. We have come a long way in environmental protection since 1906 and we also have improved technology that allows us to develop resources and still protect the environment.

It is ludicrous to lock up our natural resources and energy supplies and then send our sons and daughters to Kuwait to protect the energy resources of a foreign country. My own son came in harms way as he served as an officer in the Desert Storm conflict. I don't want to see him or my grandsons obligated to fight for foreign oil or strategic minerals when they are readily available in this country. Wouldn't it be better to develop our own natural resources in an environmentally responsible manner rather shift our energy burden to other countries? Rural America is where the products are produced and where the energy supplies are located. Behind every light switch is a coal miner, in every loaf of bread and in every hamburger is the hard work of a rural farmer or rancher. We should continue to look at ways to become energy self-sufficient. Let's approach life with the attitude that there are an abundance resources and opportunities. To lock down and lock out the public from the public lands to supposedly "protect it" from ourselves is contrary to the wise and conservative use of our available resources. The vast majority of these resources are renewable. The coal energy of the Kaiparowits and other areas is our stepping stone to the future of a yet to be discovered renewable energy supply. We can buy hundreds of years of research time with clean coal energy while the best minds work to develop alternative sources of renewable energy or we can lock ourselves and our children out of these resources and continue to depend on an ever decreasing supply of foreign oil.

Thank you again for the opportunity to testify on this important legislation.

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